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| | : | STATE OF NEW JERSEY |
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| | : | FINAL ADMINISTRATIVE ACTION |
| | : | OF THE |
| In the Matter of Daniel Antinori, <i>et al.</i> , | : | CIVIL SERVICE COMMISSION |
| County Police Officer (Special), Bergen | : | |
| County Sheriff's Office | : | |
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| CSC Docket Nos. 2021-1080, <i>et al.</i> | : | Layoff Rights Appeals |
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ISSUED: JULY 2, 2021 (DASV)

Daniel Antinori, Alexander Echevarria, Oscar Lopez, Michael Marciniak, Christopher Tinio, and Wendy Tinio, represented by Michael A. Bukosky, Esq., and Jason Gretkowski appeal the determination of their layoff rights as a result of the Civil Service Commission's (Commission) acknowledgment of a Memorandum of Agreement (MOA) in *In the Matter of the Bergen County Sherriff and County Police Officer Title Series* (CSC, decided October 21, 2020).

By way of background, in *Bergen County Sheriff, supra*, the Sheriff appealed the determination of the Director of the Division of Agency Services, denying his request to allow out-of-title series supervision of County Police Officers and Sheriff's Officers and for the out-of-title work experience to be credited for promotional examination purposes. Additionally, Bergen County, the Bergen County Sheriff, and the Police Benevolent Association (PBA) petitioned the Commission for acknowledgment of a MOA which was entered by the parties. The parties agreed that the officers in the County Police Officer title series would "be offered the opportunity to accept a lateral title change to the Civil Service title series of County Sheriff's Officer at the rank held at the time of lateral title change." The MOA also called for the repromotion of supervisory County Police Officers who had been demoted in lieu of layoff during the June 26, 2017 layoff of County Police Officers. Upon its review, the Commission found no compelling circumstance to set aside the settlement. Rather, the Commission found that the terms of an earlier MOA in 2015 eroded the classification of the subject positions when it transferred the County Police

Officers to the Sheriff's Office. Thus, it found that the settlement agreement should be acknowledged. Therefore, the Commission permitted individuals in the County Police Officer title series who declined the title change to the Sheriff's Officer title series to retain their positions and remain misclassified in the County Police Officer title series until vacated wherein the positions would then be classified as Sheriff's Officer. For those individuals who were demoted in lieu of layoff from supervisory or higher supervisory titles in 2017, the Commission directed that the corresponding special reemployment list (SRL) be certified and these supervisory positions in the County Police Officer title series would be reclassified to the corresponding rank in the Sheriff's Officer title series. As for title seniority, the Commission noted that it held, and the Superior Court of New Jersey, Appellate Division affirmed, that the titles in the County Police Officer and Sheriff's Officer title series are functionally dissimilar. Thus, title seniority was not retained. However, the parties amicably agreed to the retention, and given the complex history of these positions and for equitable reasons, the Commission found it appropriate to relax the regulatory provisions and afford the employees in the County Police Officer positions title seniority in the corresponding Sheriff's Officer title.

Moreover, although the Commission acknowledged the foregoing provision, it could not ignore the 10 entry-level County Police Officers who were totally displaced from employment from the Bergen County Sheriff's Office in 2017 and were on the SRL for County Police Officer. Thus, the Commission concluded that the 10 laid off County Police Officers on the SRL would also be deemed to have seniority as if they were an incumbent in the Sheriff's Officer title based on their date of permanent appointment as a County Police Officer. Accordingly, the Commission directed that this SRL would be used as appropriate to Sheriff's Officer and be utilized at the time of next certification for Sheriff's Officer, Bergen County. Based on its approval of the subject title change, the Commission noted that any allegations of utilizing County Police Officer and Sheriff's Officer positions interchangeably were now moot. Therefore, the Bergen County Sheriff's request to permit out-of-title supervision was also moot, and the Commission directed that once a position is vacated, due to either resignation, retirement, removal from employment, or promotion or demotion through individual reclassification requests, said positions would be classified in the Sheriff's Officer title series.

In the present matter, the appellants were laid off as County Police Officers in the Bergen County Sheriff's Office during the June 26, 2017 layoff. However, each of the appellants transferred by way of intergovernmental transfer as a Police Officer to various jurisdictions within one year of the layoff. Specifically, they transferred as follows: Antinori to Teaneck effective August 1, 2017; Echevarria to Dover effective November 6, 2017; Lopez to Bergenfield effective March 20, 2018; Marciniak to Wallington effective March 5, 2018; Christopher Tinio to Oakland effective January 11, 2018; Wendy Tinio to Elmwood Park effective March 15, 2018; and Gretkowski to Hackensack effective November 27, 2017. Therefore, since the appellants

transferred, pursuant to *N.J.A.C. 4A:8-2.3(f)*,¹ they were removed from the County Police Officer (Special), Bergen County, SRL. The appellants were notified of this action on their notice of approval of their intergovernmental transfer. The notice specifically stated that “[t]he name of an employee who agrees to a transfer shall not appear on the [SRL] for the jurisdiction from which he or she is laid off.” Agency records does not indicate that the appellants appealed their removal from the SRL at that time.

In their request, the appellants present that the Commission in *Bergen County Sheriff, supra*, provided equitable relief to the 10 remaining County Police Officers on the SRL who were laid off in 2017. The Commission afforded the laid off officers with seniority as if they were an incumbent in the Sheriff’s Officer title based on their date of permanent appointment as a County Police Officer so that they would be considered for appointment at the time of the next certification for Sheriff’s Officer. The appellants request that they too be provided with a similar remedy despite that they transferred to other jurisdictions. The appellants indicate that they were rehired by Civil Service jurisdictions and suggest that individuals on the SRL may have been hired in non-Civil Service jurisdictions and “it would be fundamentally unfair to treat laid off officers differently based upon the status of the employer with whom they were lucky enough to find employment following layoff.” In particular, Gretkowski states that the fact he accepted employment in a Civil Service jurisdiction “out of pure necessity” should not have removed him from the subject SRL. Moreover, Antinori² indicates that he would have “opted to be hired off of a reemployment list but that was never created therefore never an option, forcing [him] to take an intergovernmental transfer.” In addition, Antinori alleges that at least one County Police Officer, who he does not name, has since retired and remains on the subject SRL. Thus, he maintains that he should also remain on the SRL.

¹ It is noted that the Division of Agency Services informed the appellants’ attorney that they had been removed from the SRL due the application of *N.J.A.C. 4A:8-2.3(f)*, as the appellants received intergovernmental transfers within one year of the subject layoff.

² Antinori filed a separate appeal letter regarding the removal of his name from the subject SRL. In that letter, he also requests an appeal of his 2017 layoff. Antinori indicates that he did not appeal the decision as he “believed that the layoff and demotions were done in good faith, followed the proper procedures, and [he] understood that the titles [of County Police Officer and Sheriff’s Officer] were not interchangeable.” However, an appeal had been filed and the Commission decided Antinori’s layoff rights appeal in *In the Matter of Alan Brundage, et al., Bergen County Sheriff’s Office* (CSC, decided March 27, 2018), and found that his seniority and displacement rights were properly determined. Subsequently, PBA filed an appeal with the Superior Court of New Jersey, Appellate Division, which affirmed the Commission’s decision. The court found that the County Police Officers did not have lateral title rights against Sheriff’s Officers as the titles were too dissimilar based on the Commission’s comparison of the different duties and roles of the two positions. Consequently, the Appellate Division indicated that such a determination made the PBA’s claim that the layoff unit should have been expanded immaterial. See *In the Matter of Alan Brundage, et al.*, Docket No. A-3466- 17T3 (App. Div. June 29, 2020). An appeal regarding the good faith of Antinori’s layoff was also filed. The matter (CSC Docket No. 2017-3987) was transmitted to the Office of Administrative Law (OAL) for a hearing, and it is pending. As such, any issues raised by Antinori in his appeal letter which have already been decided or pending at the OAL will not be addressed in this decision.

In conclusion, the appellants request that *N.J.A.C.* 4A:8-2.3(f) be relaxed “to allow for the equitable placement of IGT employees on the ground of fundamental fairness and manifest equity.” They note that “[h]ad they been aware of the possibility of an equitable placement [on the subject SRL] it is likely that they would have sought employment elsewhere . . . as to avoid the strict and unfair application of the regulation.”

CONCLUSION

N.J.A.C. 4A:8-2.3(f) states that the name of an employee shall be removed from all applicable SRLs where the employee receives an intergovernmental transfer in accordance with *N.J.A.C.* 4A:4-7.1A within one year of the effective date of a layoff resulting in the employee’s separation from service. *N.J.A.C.* 4A:1-1.2(c) provides that the Commission may relax rules for good cause in a particular situation in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the present matter, the appellants’ names were removed from the County Police Officer (Special), Bergen County, SRL because they received intergovernmental transfers within one year of the June 26, 2017 layoff. The appellants request that *N.J.A.C.* 4A:8-2.3(f) be relaxed and they be restored to the SRL as a result of the relief given by the Commission in *Bergen County Sheriff, supra*, to the 10 remaining County Police Officers on the SRL who were also laid off in 2017. The appellants argue that it would be inequitable to have these two groups be treated differently.

The Commission disagrees and is not persuaded that principles of equity and fairness would dictate a different result. Pursuant to *N.J.A.C.* 4A:8-2.3(f), the appellants forfeited the right to remain on the subject SRL. It was incumbent on the appellants to know and understand their special reemployment rights upon accepting an intergovernmental transfer. They were specifically advised that they would not remain on the SRL as indicated on the notice of approval of their intergovernmental transfers, which they did not appeal at that time. It cannot be ignored that the appellants have enjoyed the benefit of the tenure protection afforded to them as permanent Civil Service employees in their new jurisdictions. Their counterparts, who may have secured employment in non-Civil Service jurisdictions, do not have that benefit. Moreover, in *In the Matters of Jonathon Cincilla, et al.* (CSC, decided April 3, 2013), where the Commission found it appropriate to remove the names of eligibles from the SRL who accepted intergovernmental transfers after a layoff, the Commission stated that “allowing the appellants to return to the [SRL] after accepting an intergovernmental transfer would undermine the intergovernmental transfer program as the receiving agency would not have any assurance that their new employees would not leave as soon as positions opened up in their prior jurisdiction.” The fact that equitable relief was given to the 10 remaining officers on

the subject SRL does not change that. The appellants' current employers must be given the same assurance regardless of the MOA, which they were not a party of, and the resulting relief. In other words, to provide the requested relief to the appellants would be detrimental to their current employers. In that regard, in proposing amendments and new rules pertaining to the intergovernmental transfer program, which included *N.J.A.C.* 4A:8-2.3(f), the Merit System Board³ anticipated a positive social and economic impact in the promulgation of the rules. It stated that "the receiving jurisdiction in an intergovernmental transfer would save substantial training costs and be able to provide more efficient and effective services to the public. The employee in an intergovernmental transfer would also benefit economically. He or she would be able to retain his or her permanent status while, in certain instances, seeking a job with better promotional opportunities. In the case of impending layoffs, the employee could receive government employment outside the sending jurisdiction. Thus, a laid off employee would be reemployed soon after his or her separation from service, thereby reducing or eliminating adverse economic consequences due to layoff." *See* 33 *N.J.* 2567(a).

Therefore, the appellants' layoff rights, *i.e.*, their removal from the subject SRL, were determined correctly. No good cause has been demonstrated to relax *N.J.A.C.* 4A:8-2.3(f) and restore the appellants' names to the subject SRL. Rather, the public interest is best served if the appellants' appointments in their new jurisdictions are not disturbed by way of the relief that the appellants seek.

A final comment is warranted. *N.J.A.C.* 4A: 8-2.3(d) provides that employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a SRL (*see N.J.A.C.* 4A:4-3.1(a)3). Although Antinori does not name the individual who retired nor provide sufficient information to make a determination regarding his allegation, the Division of Agency Services is directed to ensure that the foregoing regulation is properly applied on the subject SRL.

ORDER

Therefore, it is ordered that these appeals be denied. It is further ordered that the Division of Agency Services review the County Police Officer (Special), Bergen County, SRL consistent with this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE

³ On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Commission.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021

Deirdre' L. Webster Cobb

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